#### Todd M. Friedman (SBN 216752) Nicholas J. Bontrager (SBN 252114) FILED LAW OFFICES OF TODD M. FRIEDMAN, P.C. 2 CLERK U.S. DISTRICT COURT 369 S. Doheny Dr., #415 3 Beverly Hills, CA 90211 SEP - 3 2013 Phone: 877-206-4741 4 Fax: 866-633-0228 CENTRAL DISTRICT OF CALIFORNIA tfriedman@attorneysforconsumers.com 5 nbontrager@attorneysforconsumers.com 6 7 Attorneys for Plaintiff 8 UNITED STATES DISTRICT COURT 9 CENTRAL DISTRICT OF CALIFORNIA PAUL MANKIN, INDIVIDUALLY AND ON) BEHALF OF ALL OTHERS SIMILARLY CLASS ACTION CASE CV 13-06447-DSC CASE CV 13-06447-DSC CASE ACTION 10 11 12 **COMPLAINT FOR VIOLATIONS OF:** Plaintiff, 13 **NEGLIGENT VIOLATIONS OF** 1. VS. 14 THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. 15 MOUNTAIN WEST RESEARCH CENTER, §227 ET SEQ.] L.C., AND DOES 1 THROUGH 10, WILLFUL VIOLATIONS OF 2. 16 INCLUSIVE, AND EACH OF THEM, THE TELEPHONE CONSUMER PROTECTION ACT [47 U.S.C. 17 §227 ET SEQ.] Defendants. 18 **DEMAND FOR JURY TRIAL** 19 20 21 /// 22 /// RECEIVED CLERK, U.S. DISTRICT COURT 23 24 AUG 29 2013 /// 25 /// CENTRAL DISTRICT OF CALIFORNIA 26 27 /// 28

CLASS ACTION COMPLAINT

Plaintiff, PAUL MANKIN ("Plaintiff"), on behalf of himself and all others similarly situated, alleges the following upon information and belief based upon personal knowledge:

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### NATURE OF THE CASE

Plaintiff brings this action for himself and others similarly situated seeking 1. damages and any other available legal or equitable remedies resulting from the illegal actions of MOUNTAIN WEST RESEARCH CENTER, L.C., ("Defendant"), in negligently, knowingly, and/or willfully contacting Plaintiff on Plaintiff's cellular telephone in violation of the Telephone Consumer Protection Act, 47. U.S.C. § 227 et seq. ("TCPA"), thereby invading Plaintiff's privacy.

### **JURISDICTION & VENUE**

- Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because Plaintiff, a resident 2. of California, seeks relief on behalf of a Class, which will result in at least one class member belonging to a different state than that of Defendant, a company with its principal place of business and State of Incorporation in California state. Plaintiff also seeks up to \$1,500.00 in damages for each call in violation of the TCPA, which, when aggregated among a proposed class in the thousands, exceeds the \$5,000,000.00 threshold for federal court jurisdiction. Therefore, both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 ("CAFA") are present, and this Court has jurisdiction.
- Venue is proper in the United States District Court for the CENTRAL District of 3. California pursuant to 18 U.S.C. 1391(b) and 18 U.S.C. § 1441(a) because Defendant does business within the state of California and the county of Los Angeles.

### **PARTIES**

- Plaintiff, PAUL MANKIN("Plaintiff"), is a natural person residing in California 4. and is a "person" as defined by 47 U.S.C. § 153 (10).
- Defendant, MOUNTAIN WEST RESEARCH CENTER, L.C., ("Defendant"), is 5. a leader in the consumer debt recovery industry and is a "person" as defined by 47 U.S.C. § 153 (10).

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- 6. The above named Defendant, and its subsidiaries and agents, are collectively referred to as "Defendants." The true names and capacities of the Defendants sued herein as DOE DEFENDANTS 1 through 10, inclusive, are currently unknown to Plaintiff, who therefore sues such Defendants by fictitious names. Each of the Defendants designated herein as a DOE is legally responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend the Complaint to reflect the true names and capacities of the DOE Defendants when such identities become known.
- 7. Plaintiff is informed and believes that at all relevant times, each and every Defendant was acting as an agent and/or employee of each of the other Defendants and was acting within the course and scope of said agency and/or employment with the full knowledge and consent of each of the other Defendants. Plaintiff is informed and believes that each of the acts and/or omissions complained of herein was made known to, and ratified by, each of the other Defendants.

### **FACTUAL ALLEGATIONS**

- 8. Beginning in or around July 23, 2013 at 8:18 pm and July 24, 2013 at 7:19 p.m., Defendant contacted Plaintiff on his cellular telephone at (415) 505-5996, in an attempt to communicate with Plaintiff regarding research surveys for political parties.
- 9. Defendant placed three collection calls to Plaintiff's cellular telephone in an attempt to communicate with Plaintiff regarding research surveys for political parties.
- 10. Defendant used an "automatic telephone dialing system", as defined by 47 U.S.C. § 227(a) (1) to place its calls to Plaintiff seeking to communicate with Plaintiff regarding surveys for political parties.
- 11. Defendant's calls constituted calls that were not for emergency purposes as defined by 47 U.S.C. § 227(b) (1) (A).
- 12. Defendant's calls were placed to telephone number assigned to a cellular telephone service for which Plaintiff incurs a charge for incoming calls pursuant to 47 U.S.C.  $\S$  227(b)(1).

- 13. On numerous occasions Defendant contacted Plaintiff from telephone number (626) 544-5520.
- 14. Defendant never received Plaintiff's "prior express consent" to receive calls using an automatic telephone dialing system or an artificial or prerecorded voice on his cellular telephone pursuant to 47 U.S.C. § 227(b)(1)(A).

### **CLASS ALLEGATIONS**

15. Plaintiff brings this action on behalf of himself and all others similarly situated, as a member of the proposed class (hereafter "The Class") defined as follows:

All persons within the United States who received any collection telephone calls from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously consented to receiving such calls within the four years prior to the filing of this Complaint

- 16. Plaintiff represents, and is a member of, The Class, consisting of All persons within the United States who received any collection telephone call from Defendant to said person's cellular telephone made through the use of any automatic telephone dialing system or an artificial or prerecorded voice and such person had not previously not provided their cellular telephone number to Defendant within the four years prior to the filing of this Complaint.
- 17. Defendant, its employees and agents are excluded from The Class. Plaintiff does not know the number of members in The Class, but believes the Class members number in the thousands, if not more. Thus, this matter should be certified as a Class Action to assist in the expeditious litigation of the matter.
- 18. The Class is so numerous that the individual joinder of all of its members is impractical. While the exact number and identities of The Class members are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff is informed and believes and thereon alleges that The Class includes thousands of members. Plaintiff alleges that The Class members may be ascertained by the records maintained by Defendant.

- 19. Plaintiff and members of The Class were harmed by the acts of Defendant in at least the following ways: Defendant illegally contacted Plaintiff and Class members via their cellular telephones thereby causing Plaintiff and Class members to incur certain charges or reduced telephone time for which Plaintiff and Class members had previously paid by having to retrieve or administer messages left by Defendant during those illegal calls, and invading the privacy of said Plaintiff and Class members.
- 20. Common questions of fact and law exist as to all members of The Class which predominate over any questions affecting only individual members of The Class. These common legal and factual questions, which do not vary between Class members, and which may be determined without reference to the individual circumstances of any Class members, include, but are not limited to, the following:
  - a. Whether, within the four years prior to the filing of this Complaint,

    Defendant made any collection call (other than a call made for
    emergency purposes or made with the prior express consent of the
    called party) to a Class member using any automatic telephone
    dialing system or an artificial or prerecorded voice to any
    telephone number assigned to a cellular telephone service;
  - Whether Plaintiff and the Class members were damages thereby,
     and the extent of damages for such violation; and
  - c. Whether Defendant should be enjoined from engaging in such conduct in the future.
- 21. As a person that received numerous collection calls from Defendant using an automatic telephone dialing system or an artificial or prerecorded voice, without Plaintiff's prior express consent, Plaintiff is asserting claims that are typical of The Class.
- 22. Plaintiff will fairly and adequately protect the interests of the members of The Class. Plaintiff has retained attorneys experienced in the prosecution of class actions.
- 23. A class action is superior to other available methods of fair and efficient adjudication of the controversy, since individual litigation of the claims of all Class members is

impracticable. Even if every Class member could afford individual litigation, the court system

could not. It would be unduly burdensome to the courts in which individual litigation of

numerous issues would proceed. Individualized litigation would also present the potential for

varying, inconsistent, or contradictory judgments and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues. By contrast, the conduct of this action as a class action presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class member.

24. The prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of the this Class members not parties to such adjudications or that would substantially

25. Defendant has acted or refused to act in respects generally applicable to The Class, thereby making appropriate final and injunctive relief with regard to the members of the California Class as a whole.

impair or impede the ability of such non-party Class members to protect their interests.

### **FIRST CAUSE OF ACTION**

### Negligent Violations of the Telephone Consumer Protection Act 47 U.S.C. §227 et seq.

- 26. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-33.
- 27. The foregoing acts and omissions of Defendant constitute numerous and multiple negligent violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.
- 28. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class Members are entitled an award of \$500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- 29. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

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### SECOND CAUSE OF ACTION

# Knowing and/or Willful Violations of the Telephone Consumer Protection Act 47 U.S.C. §227 et seq.

(Against All Defendants)

- 30. Plaintiff repeats and incorporates by reference into this cause of action the allegations set forth above at Paragraphs 1-37.
- 31. The foregoing acts and omissions of Defendant constitute numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above cited provisions of 47 U.S.C. § 227 et seq.
- 32. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiff and the Class members are entitled an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
- 33. Plaintiff and the Class members are also entitled to and seek injunctive relief prohibiting such conduct in the future.

#### PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendant for the following:

#### FIRST CAUSE OF ACTION

### Negligent Violations of the Telephone Consumer Protection Act 47 U.S.C. §227 et seq.

- As a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), Plaintiff and the Class members are entitled to and request \$500 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).
- Any and all other relief that the Court deems just and proper.

### SECOND CAUSE OF ACTION

# Knowing and/or Willful Violations of the Telephone Consumer Protection Act 47 U.S.C. §227 et seq.

• As a result of Defendant's willful and/or knowing violations of 47 U.S.C. §

227(b)(1), Plaintiff and the Class members are entitled to and request treble damages, as provided by statute, up to \$1,500, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C). • Any and all other relief that the Court deems just and proper. Respectfully Submitted this 21st Day of August, 2013. LAW OFFICES OF TODD M. FRIEDMAN, P.C. s/Todd M. Friedman By: Todd M. Friedman, Esq. Law Offices of Todd M. Friedman Attorneys for Plaintiff tfriedman@attorneysforconsumers.com 

## UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA

			LIVIL	COVERSHEET					
1. (a) PLAINTIFFS ( Chec	k box if you are repre	senting yourself 🔲 )		DEFENDANTS	((	heck box if you are rep	oresenting yours	elf 🔲	)
PAUL MANKIN, INDIVIDUALEY SITUATED	MOUNTAIN WEST RESEARCH CENTER, L.C., AND DOES 1 THROUGH 10, INCLUSIVE, AND EACH OF THEM								
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Todd M. Friedman, Esq./Law Offices of Todd M. Friedman, P.C. 369 S. Doheny Dr., #415 Beverly Hills, CA 90211				(b) Attorneys (Firm are representing y	n Na ours	me, Address and Telepl elf, provide same.)	hone Number. †	fyou	
II. BASIS OF JURISDIC	FION (Place an X in or	ne box only.)	III. CIT	IZENSHIP OF PR	RIŅC	IPAL PARTIES-For D	iversity Cases Or	ıly	
1. U.S. Government  3. Federal Question (U.S.				of This State	x foi YF 3 1	OI BOSINESS III (	Principal Place his State	<b>P</b> TF	DEF 4
2. U.S. Government Defendant	2. U.S. Government 4. Diversity (Indicate Citizenship			of Another State  or Subject of a  Country	nd Principal Place nother State	<ul><li>□ 5</li><li>□ 6</li></ul>	<b>⋉</b> 5		
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IV. ORIGIN (Place an X in one box only.)  I. Original Proceeding 2. Removed from State Court 3. Remanded from Appellate Court Reopened 4. Reinstated or Reopened									
V. REQUESTED IN COM	IPLAINT: JURY DE	MAND: 🛛 Yes 🗆	No			if demanded in com			
CLASS ACTION under		Yes 🔀 No	_ [			ED IN COMPLAINT:			
VI, CAUSE OF ACTION 47 U.S.C. §227 ET SEQ. VIOLA	(Cite the U.S. Civil Statut TIONS OF THE TELEPHO	e under which you are fil NE CONSUMER PROTECTI	ing and ION ACT	write a brief stateme	nt of	cause. Do not cite jurisdi	ctional statutes un	iless dive	ersity.)
VII. NATURE OF SUIT (	Place an X in one bo	ox only).							
OTHER STATUTES	CONTRACT	REAL PROPERTY CON		IMMIGRATION 462 Naturalization		PRISONER PETITIONS Habeas Corpus:	PROPERT 820 Copyrigh	·····	r <b>s</b>
375 False Claims Act	110 Insurance	240 Torts to Land 245 Tort Product		Application		463 Alien Detainee	-	11.3	
400 State Reapportionment	120 Marine	Liability		465 Other Immigration Actions		510 Motions to Vacate Sentence	830 Patent 840 Tradema	ırk	
410 Antitrust	☐ 130 Miller Act	290 All Other Real		TORTS			SOCIAL S		ν
430 Banks and Banking	140 Negotiable Instrument	Property TORTS	PE	RSONAL PROPERTY		535 Death Penalty	861 HIA (139		<u> </u>
450 Commerce/ICC	150 Recovery of	PERSONAL INJURY 310 Airplane	$\dashv \Box$	370 Other Fraud		Other: 540 Mandamus/Other	862 Black Lui	ng (923)	
460 Deportation	Overpayment & Enforcement of	- 315 Airpiane		371 Truth in Lending			863 DIWC/DI	WW (40	5 (g))
470 Racketeer Influ-	Judgment	Product Liability السا		380 Other Personal Property Damage		555 Prison Condition	B64 SSID Title	e XVI	
enced & Corrupt Org.	151 Medicare Act	320 Assault, Libel & Slander	` <u> _</u>	385 Property Damage		S60 Civil Detainee Conditions of	865 RSI (405	(g))	
480 Consumer Credit	152 Recovery of Defaulted Student	330 Fed. Employers		Product Liability		Confinement	FEDERAL		
490 Cable/Sat TV	Loan (Excl, Vet.)	340 Marine	-	422 Appeal 28	+	635 Days Related	Defendant)	I.S. Plaint	iff or
B50 Securities/Com- modities/Exchange	153 Recovery of Overpayment of	345 Marine Product	t  └─	USC 158		625 Drug Related Seizure of Property 21	871 IRS-Thir	d Party 2	6 USC
890 Other Statutory Actions	Vet. Benefits	350 Motor Vehicle		423 Withdrawal 28 USC 157		USC 881	7609		
Actions  891 Agricultural Acts	☐ 160 Stackholders' Suits	355 Motor Vehicle		CIVIL RIGHTS 440 Other Civil Right	;   	690 Other			
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☐ Matters ☐ 895 Freedom of Info.	Contract	Injury 362 Personal Injury		442 Employment		710 Fair Labor Standards Act	<b>`</b>		
△ Act	195 Contract Product Liability	☐ Med Malpratice		443 Housing/		720 Labor/Mgmt. Relations	1		
896 Arbitration	196 Franchise	G 365 Personal Injury Product Liability	_  ப	Accomodations		740 Railway Labor Act			
899 Admin. Procedures	REAL PROPERTY 210 Land	367 Health Care/ Pharmaceutical		445 American with Disabilities-		751 Family and Medical			
Act/Review of Appeal of Agency Decision	Condemnation	Personal Injury		Employment 446 American with		Leave Act 790 Other Labor			
— 950 Constitutionality of	220 Foreclosure	Product Liability 368 Asbestos		Disabilities-Other		Litigation 791 Employee Ret. Inc.			
State Statutes	230 Rent Lease & Ejectment	Personal Injury Product Liability		448 Education		Security Act	<u> </u>		
FOR OFFICE USE ONLY: Case Number: 3 - 16/1/1									
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Page 1 of 2

## UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA CIVIL COVER SHEET

VIII(a). IDENTICAL CA	ASES: Has this a	action been previously filed in this	court and dismissed, remanded or closed?	⊠ NO		YES	
If yes, list case numl	ber(s):						
VIII(b). RELATED CAS	<b>iES</b> : Have any co	ases been previously filed in this co	ourt that are related to the present case?	⊠ NO		YES	
If yes, list case num.	ber(s):				<del></del> .		
Civil cases are deemed	related if a previo	ously filed case and the present case	•				
(Check all boxes that app	oly) [ A. Arise	from the same or closely related trans-	actions, happenings, or events; or				
			antially related or similar questions of law and fact	; of			
	_		tuplication of labor if heard by different Judges; or				
	_		right <u>and</u> one of the factors identified above in a		sent.		
IX. VENUE: (When comp	Barrard .	ng information, use an additional shee					
			State if other than California; or Foreign Cou	untry, in which	EACH na	amed	
Check here if the go	vernment, its ag	encies or employees is a named p	laintiff. If this box is checked, go to item (b).				
County in this District:*			California County outside of this District; State	, if other than Ca	lifornia; o	r Foreign	
Los Angeles							
defendant resides.			: State if other than California; or Foreign Co efendant. If this box is checked, go to item (		EACH n	amed	
County in this District:*		, , , , , , , , , , , , , , , , , , , ,	California County outside of this District; State		lifornia; o	r Foreign	
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Y SIGNATURE OF ATTOR	NEY (OR SELF-REI	PRESENTED LITIGANT):	· · · · · · · · · · · · · · · · · · ·	August 27, 2013			
Notice to Counsel/Partles	: The CV-71 (JS-44)	Civil Cover Sheet and the information	n contained herein neither replace nor supplemen the United States in September 1974, is required ig the civil docket sheet. (For more detailed instru	DUM VIGILLO LOCA	HILLIAN	is not med	
Key to Statistical codes rela	ting to Social Secu	Substantive Statemen	it of Cause of Action				
861	HIA	All claims for bealth insurance ben	efits (Medicare) under Title 18, Part A, of the Socia nursing facilities, etc., for certification as provider	al Security Act, as is of services und	amended er the pro	d. Also, igram.	
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)					
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plall claims filed for child's insurance benefits based on disability. (42 U.S.C. 405 (g))					
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405 (g))					
864	SSID	amended.	ty income payments based upon disability filed ur			ecurity Act, as	
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended, (42 U.S.C. 405 (g))					

# UNITED STATES DISTRICT COURT CENTRAL DISTRICT OF CALIFORNIA

### NOTICE OF ASSIGNMENT TO UNITED STATES JUDGES

This case has been	assigned to Di	strict Judge	Dale S. Fisc	her	_ and the assigned
Magistrate Judge is	tosenberg	_ •			
The case	number on all	documents filed v	vith the Court shou	ld read as follo	ows:
	2	::13-CV-6447-I	OSF (AGRx)		
			tes District Court fo		District of
California, the Magistrate	e Judge has beer	n designated to he	ar discovery related	l motions.	
All discovery relat	ted motions sho	ould be noticed on	the calendar of the	e Magistrate Ju	dge.
			Clerk, U. S. D	istrict Court	
September 3, 20	)13		By MDAVIS		
Date					
		NOTICE TO	COUNSEL		
A copy of this notice must filed, a copy of this notice			complaint on all de	fendants (if a 1	removal action is
Subsequent documents	must be filed a	t the following lo	cation:		
Western Division 312 N. Spring Stree Los Angeles, CA 90  Failure to file at the prop	0012	Southern Division 411 West Fourth S Santa Ana, CA 92 Il result in your d	St., Ste 1053 701	Riverside, CA	Street, Room 134 4 92501